

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-124562-14

Date:

November 24, 2014

In Re:

Legend:

Decedent 1	=
Decedent 2	=
Trust	=
Son's Trust	=
Daughter's Trust	=
Company	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
X	=
Y	=

Dear :

This letter responds to your authorized representative's letter of May 16, 2014, and subsequent correspondence, requesting an extension of time under § 2642(g)(1) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to transfers to a trust.

The facts submitted and the representations made are as follows. On Date 1, in Year 1 (a date prior to 2001), Decedent 1 and Decedent 2 executed an irrevocable trust (Trust) the terms of which created two trusts, one for the benefit of Son and his descendants (Son's Trust) and one for the benefit of Daughter and her descendants (Daughter's Trust). Son's Trust and Daughter's Trust have GST tax potential.

On Date 1, Decedent 1 and Decedent 2 gifted to Son's Trust and Daughter's Trust each an X percent interest in Company and \$Y. Also, in Year 1, Decedent 1 and Decedent 2 made gifts to trusts established for their grandchildren (Grandchildren's Trusts). These gifts qualified for the exemption to the GST tax provided in § 1433(b)(3) of P.L. 99-514, as amended by P.L. 100-647, § 1014(h)(2)-(4) (Gallo exemption).

Decedent 1 and Decedent 2 retained an accounting firm to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return. On the returns the GST exemption of Decedent 1 and Decedent 2 was incorrectly allocated to the gifts to the Grandchildren's Trusts but not allocated to the gifts to Son's Trust and Daughter's Trust.

Decedent 1 died on Date 2 (a date prior to January 1, 2001). Decedent 2 died on Date 3 (a date after January 1, 2001). At death, both decedents had available GST exemption that was automatically allocated pursuant to § 2632(c) (renumbered as § 2632(e), effective January 1, 2001). The GST exemption automatically allocated included the GST exemption incorrectly allocated to the gifts to the Grandchildren's Trusts on the decedents' Year 1 Forms 709.

You are requesting an extension of time under § 2642(g) and § 301.9100-3 that the GST exemption automatically allocated to Son's Trust and Daughter's Trust as a result of the death of the decedents be effective as of Date 1, the date of the transfers to Son's Trust and Daughter's Trust.

Law and Analysis:

Section 2501(a) provides that a tax, computed as provided in § 2502, is hereby imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2513(a)(1) provides, in general, that a gift made by one spouse to any person other than his spouse is considered as made one-half by him and one-half by his spouse provided both spouses consent on their gift tax returns.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) (as in effect at the time of the gifts) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2632(a) provides that any allocation by an individual of his GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(c)(1) (renumbered § 2632(e)(1) effective January 1, 2001) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows--(A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 2632(c)(2)(A) (renumbered § 2632(e)(2)(A) effective January 1, 2001) provides that the allocation under § 2632(c)(1) shall be made among the properties described in § 2632(c)(1)(A) and the trusts described in § 2632(c)(1)(B), as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

Section 2632(c)(2)(B) (renumbered § 2632(e)(2)(B) effective January 1, 2001) provides that for purposes of § 2632(c)(2)(A), the term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

Section 2642(b)(1) (in effect at the time of the transfer) provides that if the allocation of the GST exemption to any property is made on a timely filed gift tax return required by § 6019--(A) the value of such property for purposes of § 2642(a) (determining the inclusion ratio) shall be its value for purposes of chapter 12, and (B) such allocation shall be effective on and after the date of such transfer.

Section 2652(a)(1) provides, in general, that the transferor for purposes of the GST tax is the individual with respect to whom the property was last subject to Federal estate or gift tax.

Section 2652(a)(2) provides that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, such gift shall be so treated for GST tax purposes.

Section 2642(g)(1)(A) provides that the Secretary will by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2) and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary will take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) will be treated as if not expressly prescribed by statute.

Gallo exemption in § 1433(b)(3) of P.L. 99-514, as amended by P.L. 100-647, § 1014(h)(2)-(4) provides that a transfer to a grandchild in trust is not a direct skip subject to the GST tax if: (1) the transfer is made before January 1, 1990; (2) the aggregate transfers to a grandchild do not exceed \$2,000,000; (3) during the lifetime of the grandchild, no portion of trust corpus or income can be distributed to (or for the benefit of) any person other than the grandchild; (4) the trust estate is includible in the grandchild's gross estate if the grandchild dies before the trust terminates; and (5) for periods after the grandchild has attained age 21, all of the trust income is distributed to (or for the benefit of) the grandchild not less frequently than annually.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the deemed allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, the trustees are granted an extension of time of 120 days from the date of this letter to allocate the GST exemption deemed allocated by § 2632(c) (renumbered as § 2632(e), effective January 1, 2001) to Son's Trust and Daughter's Trust at the due date of the decedents' respective Forms 706 to Date 1, the date of the transfers. The allocations will be effective as of Date 1. The allocations should be made on a supplemental Forms 709 for Year 1, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Forms 709.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Branch Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures:
Copy for section 6110 purposes